



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Congressman Joe Schwarz
251 Central Street
Battle Creek, MI 49017

MAR 17 2009

RE: MUR 5887
Joe Schwarz

Dear Congressman Schwarz:

On December 13, 2006, the Federal Election Commission notified you of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

On March 11, 2009, the Commission found, on the basis of the information in the complaint and information obtained during its investigation, that there is no reason to believe you violated 2 U.S.C. § 441a(f). The Factual and Legal Analysis, explaining the Commission's finding, is enclosed.

The Commission reminds you that the confidentiality provisions of 2 U.S.C. § 437g(a)(12)(A) remain in effect because this matter is an open matter with other respondents. The Commission will notify you when the file in this matter closes.

If you have any questions, please contact Delbert K. Rigsby, the attorney assigned to this matter at (202) 694-1650.

Sincerely,

A handwritten signature in cursive script that reads "Susan L. Lebeaux".

Susan L. Lebeaux
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Joe Schwarz

MUR: 5887

I. INTRODUCTION

This matter was generated by a complaint filed with the Federal Election Commission by Club for Growth. See 2 U.S.C. 437(g)(a)(1). The complaint alleges, among other things, that former Congressman Joe Schwarz, Schwarz for Congress ("Schwarz Committee") and Republican Main Street Partnership-PAC ("RMSP-PAC") coordinated advertisements for the benefit of the Schwarz Committee, resulting in the Schwarz Committee accepting excessive contributions from RMSP-PAC.

For the reasons discussed below, the Commission finds no reason to believe that Joe Schwarz violated 2 U.S.C. § 441a(f) by knowingly accepting excessive contributions.

II. ANALYSIS

Joe Schwarz ran for United States Congress from the 7th Congressional District of Michigan in 2006. The complaint alleges that advertising reported by RMSP-PAC as independent expenditures were coordinated with Joe Schwarz and the Schwarz Committee, and thus were excessive contributions from RMSP-PAC to the Schwarz Committee. The Act defines in-kind contributions as, *inter alia*, expenditures made by any person "in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committee, or their agents." 2 U.S.C. § 441a(a)(7)(B)(i). Section 109.21 of the Commission's regulations provides that a public communication is coordinated with a candidate, an authorized committee or agent thereof if it meets a three-part test: (1) payment by a person

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other than the candidate or his or her authorized committee; (2) satisfaction of one of three "content" standards in section 109.21(c); and (3) satisfaction of one of six "conduct" standards in section 109.21(d). No candidate or political committee shall knowingly accept any contribution or make any expenditure in violation of the provisions of Section 441a. See 2 U.S.C. § 441a(f).

In 2006, the RSMP-PAC reported independent expenditures for advertisements supporting Congressman Joe Schwarz's unsuccessful primary election in August 2006. Shortly thereafter, the Club for Growth filed a complaint alleging that coordination of the advertisements between RMSP-PAC and the Schwarz Committee could be inferred from Schwarz's position on the PAC's Advisory Board. In response, RMSP-PAC submitted affidavits from the members of its PAC Board at the relevant time, and from Sarah Chamberlain Resnick, treasurer of RMSP-PAC, and the Schwarz Committee submitted a response, all denying that Schwarz had any input into the PAC's expenditures and stating that the members of Congress listed on RMSP-PAC's website as the PAC Advisory Board have no decision-making authority but agree to allow their names to be listed as supporters of RMSP-PAC. While these responses did not completely foreclose the possibility of coordination between the Schwarz campaign and RSMP-PAC, we concluded they were sufficiently thorough to rebut the initial basis for the coordination allegation in the complaint.

After the responses to the complaint were submitted, the complainant filed a supplement to the complaint providing excerpts from a 2007 book entitled *Freshman Orientation: House Style and Home Style*, to further support the coordination allegations.¹ The book's author interviewed Matt Marsden, an agent of the Schwarz Committee, after Schwarz lost the election, and quotes Marsden as stating during the interview that:

¹ Edward Sidlow, author of *Freshman Orientation: Home Style and House Style*, is a professor of political science at Eastern Michigan University. He also authored *Challenging the Incumbent: An Underdog's Undertaking*, a book on congressional campaigns, and has published numerous articles.

Main Street did not deliver as they promised they would. They promised to do television ads to counter Club for Growth's early ads, and I hounded them to get their pro-Schwarz stuff on the air, and they kept telling me, its on its way. Yeah, well, when it arrived, more than a month after they promised, it was too little too late....

See Attachment to the Supplement to the Complaint (ellipses in the original).

Neither Joe Schwarz nor the Schwarz Committee responded to the supplement to the complaint. Based on the alleged statements made by Mr. Marsden suggesting that there had been discussions between the PAC and the Committee in which RMSP-PAC had promised to run ads on behalf of the Schwarz Committee to counter Club for Growth's early ads, and because the advertisements reported by RSMP-PAC as independent expenditures on behalf of the Schwarz campaign met the payment and content prongs of the coordinated communications regulations, *see* 11 C.F.R. §§ 109.21(a) and (c)(3), the Commission found reason to believe that RMSP-PAC made, and that the Schwarz Committee accepted, and failed to disclose, an excessive contribution, and authorized an investigation to determine whether the conduct prong was satisfied.

We have now completed our investigation. The evidence shows that RMSP-PAC and the Schwarz Committee, through Sarah Resnick and Matt Marsden coordinated radio ads that aired in February 2006 and July 2006 that were paid for by RMSP-PAC on behalf of the Schwarz Committee. At the reason to believe stage, the Commission made no findings as to former Congressman Joe Schwarz. During its investigation, the Commission did not uncover any information that Mr. Schwarz personally participated in coordinating the communications.

Therefore, there is no reason to believe that former Congressman Joe Schwarz violated 2 U.S.C. § 441a(f).

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